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Part IV

Environmental Protection Agency

40 CFR Part 261

**Deferral of Petroleum UST-Contaminated
Media and Debris From RCRA Hazardous
Waste Requirements: Notice of Data
Availability; Proposed Rule**

II. EPA's Studies

As explained above, the application of the TC rule to UST cleanups was temporarily deferred to allow cleanups under the UST program to proceed while the Agency evaluated the extent and nature of the potential impacts of Subtitle C requirements if applied to the UST program and the feasibility of regulatory alternatives for program integration. In fulfillment of the commitment the Agency made in the preamble to the final TC rule, EPA has completed studies that will be used as key inputs to the final determination regarding the regulation of petroleum UST-contaminated media and debris as hazardous waste. These studies are available for review in the docket for this notice and are briefly described below.

A. Technical Study

The Agency is making available today for public comment a draft report entitled "TC Study of Petroleum Contaminated Media." This report is organized as follows:

- Estimates of the amounts of UST petroleum-contaminated soils that might be expected to exhibit the hazardous waste characteristic of toxicity if subject to the TCLP test;
- Impacts on hazardous waste capacity nationwide if these materials required management as hazardous waste;
- State management practices for petroleum-contaminated soils from USTs;
- Overview of technologies currently used for management of petroleum-contaminated soils and groundwater; and
- Impacts on the RCRA Subtitle I and C programs of removing the temporary deferral.

B. Impacts Study

The Agency is also making available today for public comment a draft report entitled "The Impacts of Removing the TCLP Deferral for Petroleum-Contaminated Media at Underground Storage Tanks Sites." This report is organized as follows:

- Procedural impacts of removing the deferral with regard to changes that would be required in cleanup procedures, technologies and the pace of UST corrective actions;
- Cost impacts of removing the deferral, to the regulated community as well as to EPA and the States; and
- Preliminary assessment of health risk impacts associated with removing the temporary deferral.

C. Study Findings

The findings of these two reports corroborate the preliminary assessment that EPA made at the time of promulgation of the temporary deferral. Specifically, the findings of the two studies indicate that removing the TC deferral would significantly affect UST cleanup procedures, delay remedial actions, and increase soil remediation costs. Further, delays in site remediation caused by compliance with Subtitle C requirements could increase health and environmental risks prior to cleanup.

In addition to findings concerning the impacts of removing the deferral, these studies also indicate that many States have programs in place to regulate the management of UST petroleum-contaminated media and debris. The vast majority of these State programs address in some manner the entire cycle of UST petroleum-contaminated soils and groundwater management, from initial characterization through storage and ultimate treatment or disposal.

EPA is interested in any comments that the public may have on the content of these studies and in the use of these studies to support a final determination concerning the regulation of UST petroleum-contaminated media and debris as hazardous waste.

III. Public Meetings

In the preamble to the 1990 TC rule, EPA also stated its intention to convene a public forum to discuss the issues associated with regulating UST petroleum-contaminated soils and debris under Subtitle C of RCRA. To fulfill this commitment, in September and December, 1991, EPA convened several meetings with various interested parties (including representatives from the States, Congressional staff, environmental groups and the waste treatment and waste generating industries) to discuss issues related to the cleanup of petroleum contamination from UST at well as non-UST sources, and the potential impacts of the TC rule on these cleanups.

The thirteen States attending these meetings expressed significant concern about the adverse environmental impacts resulting from the application of the TC rule to petroleum UST releases. In the view of many States, the delays associated with RCRA Subtitle C management would allow for volatilization and migration of certain TC constituents, such as benzene prior to cleanup. Groups representing the waste generating industries generally agreed with the States, although several

stated that this problem was not unique to petroleum-contaminated media.

Representatives of environmental groups and certain members of the hazardous waste treatment industry expressed concerns with the deferral as a mechanism for solving the implementation problems posed by Subtitle C regulation of petroleum-contaminated media and debris. They suggested that EPA consider modifying the hazardous waste requirements to accommodate these cleanup wastes rather than exempting the wastes entirely from important procedural and substantive hazardous waste requirements.

A complete summary of these meetings is in the docket for this action. The various viewpoints expressed in these meetings will be considered as part of EPA's final decisionmaking concerning the deferral.

IV. Schedule for Final Determination

EPA will review and evaluate the public comments on the studies and meetings described in this notice as part of its decisionmaking concerning the regulatory status of UST petroleum-contaminated media and debris. The Agency also expects to publish later this year another notice addressing the regulatory status of UST petroleum-contaminated media and debris. That notice will include EPA's evaluation of whether and how the Subtitle C regulations can be amended to accommodate the UST wastes and avoid the administrative and environmental problems associated with regulation of UST wastes as hazardous that are noted above and were discussed in the preamble to the 1990 TC final rule.

Following review of all the public comments submitted on these notices, EPA plans to publish a final determination that will terminate the temporary deferral (codified at 40 CFR 261.4(b)(10)), permanently exempt UST petroleum-contaminated media and debris from the TC, or take some other regulatory action concerning the applicability of hazardous waste requirements to these cleanup wastes. EPA currently expects to publish this determination in the Federal Register by March 31, 1993.

Dated: July 23, 1992.

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